

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2013 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BODELI URBAN CO OP BANK LTD

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner
Mr N. D.Gohil, ASSTT.GOVERNMENT PLEADER for Respondent No. 1
MR PJ YAGNIK for Respondent No. 2
MR BG PATEL for Respondent No. 3
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/06/2000

ORAL JUDGEMENT

1. The petitioner is a co-operative bank which claims title over 56 Sq.yds. of land bearing city survey No. 1961 (revenue survey No. 212) of Bodeli, as the purchaser of the said property from respondent

No.3Chandubhai Ishwarbhai Thakker by a registered sale deed executed in 1982 for a consideration of Rs. 36,000/-.

2. The facts leading to the present petition can be narrated thus:

2.1 The land in question viz. city survey No. 1961 of Bodeli admeasuring 56 sq.yds. was a village site land and belonged to father of respondent No.3.The said property was mutated in the name of respondent No.3 upon demise of his father. That on introduction of city survey in Bodeli , an inquiry was made and without any audience being given to respondent No.3 or his father, the inquiry officer ,City Survey, Bodeli held that the land in question belonged to Government and an order to that effect was passed by the Inquiry Officer on April 30,. 1976. Thereafter, a notice under Section 133 of the Land Revenue Code was served on respondent No.3 who in turn appeared before the Inquiry Officer and pointed out that the land in question belonged to his father and after his death, respondent No.3 himself became the owner. He produced the relevant record and documents to support his claim. The Inquiry Officer ,therefore, was satisfied that the land belonged to respondent No.3. He,therefore, set aside order dated April 30, 1976 and held that the land in question was of the ownership of respondent No.3 , by passing an order on June 30, 1976. The revenue records also indicated that the land in question stood in the name of respondent No.3. However, one Kantilal Ramjibhai made some grievance before the Mamlatdar, Sankheda in form of an application and alleged that inquiry under Section 37 (2) of the Land Revenue Code was not held in respect of the said property. The Deputy Collector, Chhota-Udepur,thereafter, initiated suo motu revision vide CTS TV No. 9 of 1986 and confirmed the order dated June 30,1976 passed by the Inquiry Officer, City Survey, Bodeli.

2.2 In the meantime, one CTS appeal No.2 of 11989 was preferred before the Collector challenging the said order. In response thereto, respondent No.3 appeared before the Collector and filed a written reply. The Collector, vide his order dated March 31,1990, allowed the appeal, setting aside the order passed by the Deputy Collector and directed inquiry under Section 37 (2) of the Code. In that order, certain observations were made. Respondent No.3 was aggrieved by those observations and he,therefore, challenged the said order in revision before the Additional Chief Secretary (Appeals), Revenue

Department who, in turn, passed the impugned order dismissing the revision application and setting aside the order passed by the Inquiry Officer on May 7, 1976 and order of the Deputy Collector dated August 22, 1988, at the same time, confirming the order of the Inquiry Officer dated April 20, 1976. While coming to this conclusion, the Additional Chief Secretary observed that no inquiry under Section 37 (2) is required to be initiated as directed by the Collector by his order dated 31st March, 1990. The petitioner is aggrieved by this order and hence, this petition.

3. Learned advocate Mr., A.J.Patel for the petitioner submitted that according to the scheme of the Code, where there is a dispute between a private citizen and the Government regarding ownership of the land, inquiry under Section 37(2) is required to be held. In the instant case, there is a dispute regarding title over the property in question and, therefore, the Collector was right in directing inquiry under section 37 (2) of the Code. The Additional Chief Secretary, therefore, committed an error while setting aside that order by observing that no inquiry under section 37 (2) is required to be held. He submitted that these powers are exercised by the Additional Chief Secretary under Section 211 of the Code; whereas, the order passed under Section 37(2) would be challengeable before the Revenue Tribunal. The proceedings are altogether different and legal right of the petitioner is, therefore, adversely affected by this order which deserves to be quashed and set aside and inquiry under Section 37 (2) may be directed to be proceeded with, as directed by the Collector.

4. Mr. Gohil, learned AGP has opposed this petition.

5. Having regard to the rival side contentions, there is no dispute about the fact that there is a dispute as to title of the land in question between the petitioner, a cooperative bank claiming through original owner-respondent No.3, on one hand and the Government on the other. The Collector has directed inquiry to be held under section 37 (2) of the Code. If that provision is seen, it is an enabling provision which reads as under :

"(2) Where any property or any right in or over any properties is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer, after formal inquiry of which

due notice has been given, to pass an order deciding the claim."

6. Now, if the provisions of Bombay Revenue Tribunal Act, 1957 are seen, section 9 decides jurisdiction of the Tribunal and if the first Schedule is seen, it enables the Tribunal to exercise appellate or revisional jurisdiction against an order passed under Section 37 (2) of the Code. By the impugned order, the Additional Chief Secretary has settled the dispute himself without holding any inquiry under section 37 (2) of the Code, while exercising power under Section 211 of the Code which can be challenged only before this Court. It is, therefore, clear that the scheme of the law requires that where there is a dispute between a citizen and the Government regarding title, inquiry under section 37 (2) is required to be held. This view is expressed by this Court earlier in the case of Aher Naran Vijanand vs. State of Gujarat and another,³¹ (2) GLR 1161.

7. In view of the above discussion, the petition deserves to be allowed. The order of the Additional Chief Secretary, dated 23.11.1990/ 7.12.1990 impugned in this petition is hereby quashed and set aside. Inquiry under section 37 (2) of the Land Revenue Code, as directed by the Collector vide order, dated 31/3/1990 to proceed with in accordance with law. Rule is made absolute. No costs.

(A.L.Dave, J.)

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